



U.S. Department of Justice

Environment and Natural Resources Division

90-5-2-1-09608

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November 21, 2016

*By Email*

Brian Montag  
*Outside Counsel to Essroc Cement Corp.*  
K&L Gates LLP  
One Newark Center, Tenth Floor  
Newark, New Jersey 07102

Re: Essroc Request Related to SNCR at Logansport Kiln 2 under Consent Decree  
(No. 2:11-cv-650-DSC)

Dear Mr. Montag:

We are in receipt of your letter dated October 12, 2016 regarding the requirement in the 2011 Essroc Consent Decree (CD) to install selective non-catalytic reduction (SNCR) on Kiln #2 at the Logansport Cement Plant in Logansport, Indiana. In the letter, Essroc offers to meet an emission limit of 5.25 lb NO<sub>x</sub>/ton clinker at Kiln 2, provided that Essroc be relieved of its obligation to install an SNCR at Kiln 2.

For the reasons described below, we cannot agree to the proposed modification. In addition, we believe Essroc has failed to comply with the CD in several areas at Logansport.

**I. Background Concerning NO<sub>x</sub> Requirements at the Logansport Plant**

The Governments and Essroc engaged in extensive negotiations regarding NO<sub>x</sub> controls at the Logansport facility, first leading up to the lodging of the CD and then during a dispute resolution process that produced a CD modification. One of the key provisions of the CD required Essroc to conduct a pilot study (Pilot Study) on the operation of Selective Catalytic Reduction (SCR) at Kiln #1 of the Logansport plant by July 31, 2013. If the SCR proved to be successful, then Essroc would be required to install SCR at both Kiln 1 and Kiln 2 at the Logansport plant by the fall of 2015. If not, Essroc would instead be required to install SNCR at both kilns, continuously operate the SNCRs, and engage in a test and set process to determine the appropriate emission limit to meet with the SNCRs.

On December 17, 2013, EPA disapproved the July 2013 SCR Pilot Study report, because Essroc did not design and conduct the Pilot Study according to the terms of the CD: the study design did not include reheating the gas stream to a temperature necessary for proper SCR operation and Essroc failed to operate the SCR system at the gas temperature and flow rates recommended by its own contractor when conducting the study.

As a result, Essroc initiated the CD's dispute resolution provisions. The parties ultimately agreed to modify the CD to resolve the Pilot Study dispute, and the Court entered the First Modification to Consent Decree (First Modification) on December 31, 2015. The First Modification required Essroc to retest the SCR system at Logansport, and eventually install SNCR at both Kilns 1 and 2. The First Modification did not require Essroc to install SCR at the Logansport Kilns even if the retest was successful, but instead required SNCR as the guaranteed minimum level of NO<sub>x</sub> control at the Kilns. This was a significant compromise by EPA and the Indiana Department of Environmental Management (IDEM). Yet, Essroc now asks for a further compromise regarding NO<sub>x</sub> controls at Kiln 2, and does so less than one year after the First Modification was entered by the Court.

## **II. Essroc's Proposed Modification**

Essroc installed the SNCR at Kiln 1 and began operation on May 30, 2016. Paragraph 19 of the CD required that SNCR be installed at Kiln 2 by September 30, 2015, should that be the option chosen by Essroc. The First Modification extended the date for SNCR installation at Kiln 2 until March 30, 2017. Essroc now asserts that "[d]ue to the physical differences described during the meeting and included in Appendix 1, SNCR cannot be installed on Kiln 2 as currently configured."

As an initial matter, we note that this is the *first* time we have heard that there may be technical issues in installing SNCR at Logansport's Kiln 2. EPA and IDEM would like to visit the Logansport plant and discuss any technical challenges associated with installing SNCR at Kiln 2. We believe that, with some modifications and operational changes to the Kiln 2 system, installing SNCR would be technically feasible. Essroc has also identified concerns with installation of a rotary coupling; however, there are other options for reagent delivery into the SNCR temperature window. We look forward to a discussion of the options that Essroc has investigated, including some form of mid kiln depositing of solid materials, or an advanced technology stationary lance system designed to deliver the reagent to the correct temperature zone.

Even assuming that the company is correct regarding its inability to install SCNR, the proposed modification is untenable. The available emissions data shows that the baseline NO<sub>x</sub> emissions rate was 5.15 lb/ton for the first six months of 2016. Therefore, your proposed rate of 5.25 lb/ton provides no additional environmental benefit from current conditions and cannot be the basis for a modification.

## **III. Other Compliance-Related Issues at Logansport**

### **A. SCR Pilot Test Schedule**

Essroc submitted a new SCR Pilot Study design report on November 25, 2015. Within this design report was a schedule for the SCR Pilot Test. According to that schedule, on-site "startup and shakedown testing" would begin on September 1, 2016, and the test would begin on

September 15, 2016. EPA approved the SCR Pilot Test Design Report (Design Report) in January 2016.

Paragraph 45 of the CD provides that, for any approved report, Essroc “shall take all actions required by the . . . report, in accordance with the schedules and requirements” thereof. The approved SCR Design Report falls within the ambit of Paragraph 45. Nonetheless, Essroc has failed to perform the test in accordance with the schedule contained therein. Essroc’s failure to do so constitutes a noncompliance with the CD.

## **B. Other Compliance Issues**

EPA and IDEM have two additional concerns related to Essroc’s compliance with the CD at Logansport. First, Paragraph 24 of the CD requires Essroc to “continuously operate” SO<sub>2</sub> control technology applicable to each kiln. Essroc does not appear to be meeting this requirement at the Logansport plant. Second, Essroc may have failed to obtain the required permits pursuant to Paragraph 37 of the CD.<sup>1</sup>

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For the reasons described above, we do not believe the proposed modification offered by Essroc is appropriate, and we advise that Essroc install and operate SNCR on Kiln 2 as required by the First Modification. As noted above, we believe it would be helpful for EPA and IDEM to visit plant and discuss the perceived technical challenges. Please let us know when necessary personnel can be made available at the Logansport facility to engage in such a plant visit and discussion.

Please contact me if you have any questions.

Sincerely,

s/Thomas A. Benson  
Thomas A. Benson

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<sup>1</sup> Paragraph 37 requires that Essroc “within 12 months after the Commencement of operation of each Control Technology,” shall apply to the Affected State to include the requirements in a construction permit or other permit or approval (other than a Title V permit). Essroc’s SO<sub>2</sub> controls have been in place since 2013 and 2014, respectively, but Essroc did not submit an application to IDEM to incorporate the CD requirements related to these controls into a construction permit until October 3, 2016.